Supreme Court, U.S.
FILED

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No.

In The

# Supreme Court of the United States

October Term, 1997

THEODORE P. COATES,

*Petitioner,*

*vs.*

KENNETH M. SEATON,

*Respondent.*

*On Petition for Writ of Certiorari to the Court of Appeals of the State of Colorado*

## PETITION FOR WRIT OF CERTIORARI

MICHAEL W. LILLIE
*Counsel of Record*
LILLIE ASSOCIATES LLC
*Attorneys for Petitioner*
7600 East Arapahoe
Suite 312
Englewood, Colorado 80112
(303) 694-1100

145945

(800) 274-3321 • (800) 359-6859
A DIVISION OF COUNSEL PRESS

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## (a) Question Presented for Review

Whether the full faith and credit clause requires Colorado to enforce a Tennessee judgment obtained in a lawsuit on a consumer debt where the Tennessee judgment was obtained in violation of the Fair Debt Collection Practices Act provision requiring that such lawsuit be brought in Colorado.

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Federal Trade Commission,
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Act, December 13, 1998.....8

***Legislative History:***

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Theodore P. Coates petitions for a writ of certiorari to review the opinion and judgment of the Colorado Court of Appeals entered in this case on May , 1997.

## OPINIONS BELOW

The opinion of the Colorado Supreme Court January 20, 1998 denying certiorari (Appendix C) is not reported.

The opinion of the Colorado Court of Appeals May 15, 1997 (Appendix A) is not reported.

## JURISDICTION

The opinion of the Colorado Court of Appeals was entered on May 15, 1997. The opinion of the Colorado Supreme Court denying certiorari was entered on January 24, 1998. The jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C. § 1254 (1994).

## STATUTES INVOLVED

Any debt collector who brings any legal action on a debt against any consumer shall--

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity--

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

15 U.S.C. § 1692i (1982).

**"Section 1692n. Relation to State Laws**

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter form complying with the laws of any State with respect to debt collection practices except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section , a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

15 U.S.C. §1692n

## STATEMENT OF THE CASE

Mr. Seaton, a Tennessee debt collector, obtained a judgment against Mr. Coates, a Colorado consumer, on a consumer debt. Mr. Seaton's Tennessee judgment, no matter what Tennessee law it was based on, was inconsistent with the federal Fair Debt Collection Practices Act ("the Federal Act") provision requiring Mr. Seaton to sue Mr. Coates on such debt in Colorado, not Tennessee. 15 U.S.C. §1692i. Mr. Coates filed a special appearance in Tennessee and challenged the jurisdiction of the Tennessee court. The Tennessee court denied such challenge and entered summary judgment against Mr. Coates.

When Mr. Seaton sought to enforce the improperly obtained Tennessee consumer debt judgment in Colorado, Mr. Coates, arguing that such Tennessee judgment was inconsistent with the Federal Act and void, objected to enforcement of the Tennessee judgment in Colorado. The Colorado courts held that the full faith and credit clause of the Constitution mandated the enforcement of Mr. Seaton's Tennessee consumer debt judgment in Colorado despite such judgment's inconsistency with the provisions of the Federal Act.

Mr. Coates contends that the consumer protection provisions of the Federal Act are inconsistent with and invalidate the Tennessee judgment and that the full faith and credit clause did not mandate the enforcement of the

Tennessee judgment given that it was obtained inconsistently with the Federal Act.

## REASONS FOR GRANTING THE PETITION

This Case presents an important federal statutory issue - the effect of the federal Fair Debt Collection Practices Act upon a state court enforcement of an improperly obtained foreign consumer debt judgment. This is an issue which will not arise in the federal courts but only in state courts. Now is the time for the Court to answer this fairly simple question.

### Argument

This case does not present a legal question on which the various circuits have been or will be split. Consumer debt collectors will have too much sense to go to federal court to enforce their consumer debts. No, this is a matter for this Court enforcing the provisions of federal law against consumer debt collectors anxious to avoid federal courts and federal law and against state courts apparently content with such tactics.

This Court has already supported the Federal Act. *Heintz v. Jenkins*, 514 U.S. 291 (1995). This is another example requiring such action. The issue is not a complex one and this Court's handling of such issue should not detract from or jeopardize its full attention to and

handling of any other, more complex matters which arise.

That the prosecution of the Tennessee lawsuit and judgment was contrary to the requirements of the Federal Act is not in dispute. At most, Mr. Seaton denies Mr. Coates' right to interpose the Federal Act as a defense to Mr. Seaton's Colorado postjudgment proceedings.

Mr. Coates, it should be mentioned, is not questioning or attacking the propriety or validity of any underlying debt owing by him to Mr. Seaton. All Mr. Coates has questioned is the judgment obtained in Tennessee and Mr. Seaton's attempts in Colorado to enforce such Tennessee judgment.

The Federal Act provides that an action to recover a consumer debt can be brought

> "only in the judicial district...in which such consumer signed the contract sued upon or...in which such consumer resides at the commencement of the action."

15 U.S.C. § 1692i (a) (2). Mr. Coates signed his note in Colorado and has at all times resided in Colorado.

The Federal Act also voids any state laws inconsistent with its provisions. 15 U.S.C. § 1692n. In short, no matter what

basis the Tennessee courts might have had for entering judgment against Mr. Coates, such basis would have been voided by the Federal Act.

Compliance with the provision of the Federal Act is mandatory and a judgment obtained in the wrong state is void. As one article has stated

> "A collector may file suit only in specified courts. If real property secures the debt, the creditor must sue in the judicial district where the real property is located. If the debt is not secured by real property, the creditor may sue only in the judicial district where the debtor signed the contract or where the debtor resides upon commencement of the action."
>
> "The FDCPA is apparently the only federal statute in which Congress has prescribed local venue provisions. The venue provisions of section 1692i(a) attempt to minimize the perceived imbalance of power between debtors and creditors by requiring venue for consumer debt actions in a locale convenient to the debtor. Though no case to date has so held, attorneys should assume that courts other than those specified in section 1692i(a) cannot exercise jurisdiction over a

> consumer debt action, despite otherwise valid jurisdiction and state conferred venue. Similarly, *attorneys should assume that judgments entered by courts without section 1692i(a) venue are void.*"

Sweig, "Guidelines for Consumer Debt Collection by Attorneys under the 1986 Amendment to the Fair Debt Collection Practices Act." 21 New England L. Rev. 697 at 705 (1986)(emphasis added). In *Oglesby v. Rotch*, 1993 WL 460841 at page 10 (N.D.Ill.) the court noted:

> ...nor have we found any support for the proposition that consumers can waive the protection of 1692I by participating in a lawsuit filed against them in improper venues."

See also *Blakemore v. Pekay*, 895 F.Supp. 972 (N.D.Ill. 1995).

The legislative history of the Federal Act suggests that denying enforcement to an improperly obtained foreign judgment would be entirely consistent with the Act:

> This legislation also addresses the problem of "forum abuse," an unfair practice in which debt collectors file suit against consumers in courts which are so distant or inconvenient

> that consumers are unable to appear. As a result, the debt collector obtains a default judgment and the consumer is denied his day in court.
>
> In response to this practice, the bill adopts the "fair venue standards" developed by the Federal Trade Commission. A debt collector who files suit must do so either where the consumer resides or where the underlying contract was signed.

Senate Report No 95-382, August 5, 1997.

The Federal Trade Commission comments on the proper forum requirements of section 1652 (i)(a) likewise demonstrate that improperly obtained judgments not be enforceable in other states:

> *If a judgment is obtained in a forum that satisfies the requirement of this section,* it may be enforced in another jurisdiction, because the consumer previously has had the opportunity to defend the original action in a convenient forum.

Federal Trade Commission, Statements of General Policy or Interpretation Staff Commentary on the Fair Debt Collection

Practices Act, December 13, 1998. (emphasis supplied)

If Mr. Seaton's judgment enforcement actions are allowed to stand, in the future debt collectors of State A debtors will be able to avoid the Federal Act by going outside State A, obtaining their judgments, and then coming back to State A to enforce them against State A consumers, whether or not they comply with the Federal Act.

Since the Tennessee judgment is void under the Federal Act, the Colorado courts were wrong to accord it full faith and credit under the Full Faith and Credit Clause.

## CONCLUSION

The decision by the Colorado courts to deny to Mr. Coates any protection under the Federal Act from the void Tennessee judgment is inconsistent with the spirit and intent of such legislation and the Full Faith and Credit Clause. This petition for a writ of certiorari should be granted.

Respectfully submitted,

LILLIE ASSOCIATES LLC

By_____
Michael W. Lillie
7600 East Arapahoe, Suite 312
Englewood CO 80112
(303)694-1100 Fax(303)694-1188
Counsel to Petitioner

**Appendix A-**

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COLORADO COURT OF APPEALS
MAY 15, 1997
No. 96CA0787
NOT SELECTED FOR PUBLICATION

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Kenneth M. Seaton,

Plaintiff-Appellee,

v.

Theodore P. Coates,

Defendant-Appellant.

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Appeal from the District Court of
Arapahoe County
Honorable Cheryl L. Post, Judge
No. 93CV932

Division III
JUDGMENT AFFIRMED
Opinion by JUDGE CASEBOLT
Hume and Ney, JJ., Concur

---

In this action to enforce an out-of-state judgment, defendant, Theodore P. Coates, appeals the trial court's order in favor of plaintiff, Kenneth M. Seaton, that denied Coates' C.R.C.P. 60(b) motion to vacate the judgment. We affirm.

Seaton, a holder of Coates' defaulted promissory note, sued Coates in Tennessee and obtained a judgment on the note. Coates fully participated in the Tennessee Action.

Seaton then sought to enforce the Tennessee judgment in Colorado. Coates filed a C.R.C.P. 60(b) motion to vacate the Tennessee judgment, claiming that the judgment was void and could not be enforced in Colorado. The court denied Coates' motion and this appeal followed.

I.

Coates contends that the Tennessee judgment is void because it was obtained in violation of the venue provision of the Federal Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. section 1692I (1982). We disagree.

Under U.S. Const. art. IV, section 1, the final judgments and public acts of one state must be given full faith and credit in every other state. Tucher v. Vista Financial Corp., 192 Colo. 440, 560 P.2d 453 (1997).

The nature and amount of a foreign judgment or other aspects concerning its merits cannot be relitigated in the state in which enforcement is sought. Thus, a foreign judgment will be enforced to its full extent regardless of any errors or irregularities it may contain. See

Marworth, Inc. v. McGuire, 810 P.2d 653 (Colo. 1991). See also Hansen v. Pingenot, 739 P.2d 911 (Colo. App. 1987) (the enforcing court cannot redetermine the merits of the case or the wisdom of the judgment).

A foreign judgment, however, may be collaterally attacked under C.R.C.P. 60(b) in three limited circumstances: (1) if the judgment is void; (2) if the judgment is based upon extrinsic fraud; or (3) if the judgment has been satisfied, released, or discharged, a prior judgment upon which it is based has been reversed or other wise vacated, or it is no longer equitable that the judgment should have prospective application. Marworth, In. v. McGuire, supra. The first exception to enforcement under the full faith and credit clause--when the judgment is void-- is at issue here.

A judgment is void only if the rendering court lacked jurisdiction over the subject matter or the parties, or acted in violation of due process of law. See E.B Jones Construction Co. v. City and County of Denver, 717 P.2d 1009 (Colo. App. 1986). Generally, improper venue does not constitute a jurisdictional defect that would make a default judgment void. Sisneros v. First National Bank, 689 P.2d 1178 (Colo. App. 1984).

The concept of void judgments is narrowly construed and does not include erroneous applications of law. See E.J.R. v. District Court, 892 P.2d 222 (Colo. 1995).

Here, Coates filed a motion to dismiss in the Tennessee court alleging improper venue under section 1692i of the FDCPA. The court denied Coates' motion and entered summary judgment in favor of Seaton.

Coates argues that the Tennessee court erred in failing to apply section 1692i, and that such error made the judgment void because the venue provision is mandatory and the equivalent of a jurisdictional provision. Even if we assume, arguendo, that the Tennessee court erred in failing to apply the FDCPA's venue provision in that action, we reject Coates' assertion that such an error rendered the judgment void.

Neither section 1692i, nor any other part of the federal act, indicates that a failure to bring an action in the venue required by section 1692i renders a subsequent judgment void. Rather, section 1692k specifies that, when a debt collector "fails to comply with any provision of 15 U.S.C. sections 1692 et seq.," the debtor may recover actual damages, attorney's fees, costs of the action, and additional damages in the discretion of the court. 15 U.S.C. section 1692k (1), (2), (3) (1982) (emphasis added) (brackets omitted).

Coates' reliance on Oglesby v. Rotche, No. 93C4183, 1993 WL 460841 (N.D. Ill. Nov. 5, 1993) for a contrary interpretation of section 1692I is misplaced. The court there observed that a debtor's remedy against a creditor who files suit in the wrong venue consists of civil penalties as provided in section 1692k. In coming to this conclusion, the

court recognized that "section 1692i is not really a venue statute but is more in the nature of a statutory tort which is completed upon the filing of an action in an improper venue." Oglesby v. Rotche, supra, at *10.

We are not aware of any other authority to support Coates' interpretation of the FDCPA.

Under these circumstance, we perceive no reason to depart from the general rule that improper venue does not amount to a jurisdictional defect, making a judgment void. See Sisneros v. First National Bank, supra.

To the extent that Coates asserts fraud as a defense to enforcement, we note that he has provided no factual support for this claim, has not alleged that the fraud was "extrinsic," and did not address this argument an appeal. See Hunter v. Colorado Mountain Junior College District, 804 P.2d 277 (Colo. App. 1990) (party asserting a trial court error bears the burden of presenting a record which discloses the error).

II.

Coates next maintains that, regardless of the validity of the Tennessee judgment, Seaton nonetheless lacked authority to collect the judgment in Colorado because he was a debt collector under the Colorado Fair Debt Collection Practices Act (FDCPA), section 12-140101, et seq., C.R.S. (1991 Repl. Vol. 5a), and lacked a debt collector's license. We are not persuaded.

A court may consider C.R.C.P. 60 (b) motions for relief from a foreign judgment only to the extent permitted by the full faith and credit clause. Therefore, a judgment debtor may only raise the defenses of a state statute that could constitutionally be raised under the full faith and credit clause, and which are directed to the validity of the foreign judgment. Marworth, Inc. v. McGuire, supra (discussing the uniform Enforcement of Foreign Judgments Act, section 13-53-101, et seq., C.R.S. (1987 Repl. Vol. 6a)).

Here, Coates' argument that Seaton is a debt collector acting without a license under the Colorado FDCPA does not raise one of the three recognized defenses to enforcement under the full faith and credit clause. See Marworth Inc. v. McGuire, supra. We also note that there is nothing in the Colorado FDCPA to suggest that a failure to follow its provisions renders a judgment void.

Coates' argument, therefore, even if true, does not state a viable ground to challenge enforcement under the full faith and credit clause.

Thus, because the Tennessee judgment is not void or otherwise unenforceable under the full faith and credit clause, the trial court properly denied Coates' C.R.C.P. 60(b) motion to vacate.

The trial court's order is affirmed.
JUDGE HUME AND JUDGE NEY concur.

Appendix B

**DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO**
Case No. 93 CV 932, Division 4

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**ORDER**

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KENNETH M. SEATON,

Plaintiff,

v.

THEODORE P. COATES

Defendant.

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THIS matter is before the court the motion for entry of judgment. At the hearing in this case, the counsel stated that they would submit an agreed upon form of order. To date, no such order has been submitted. No transcript of the Court's ruling and order from April 8, 1994 was provided to this Court, despite requests. The court can only rely on the minute order from April 8, 1994.

It is ordered that Defendant's motion to compel discovery is denied and Defendant's motion to vacate foreign judgment and stay execution is denied.

SO ORDERED NUNC PRO TUNC

Done this 19th day of March, 1996 by the Court:

_____

DEANNA E. HICKMAN
DISTRICT COURT JUDGE

**Appendix C-**

SUPREME COURT, STATE OF COLORADO
CASE NO. 97sc563
CERTIORARI TO THE COLORADO COURT OF APPEALS, 96CA0787
DISTRICT COURT, ARAPAHOE COUNTY, 93CV932

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**ORDER OF COURT**

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THEODORE P. COATES,

Petitioner,

v.

KENNETH M. SEATON,

Respondent.

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Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the opinion of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, Denied.

BY THE COURT, EN BANC, JANUARY 20, 1998.